

### **REMARKS**

The Final Office Action mailed July 26, 2006 has been carefully considered.

Claims 1-17 are pending and stand rejected.

Claims 1, 6, 9, 10, 13, 14 and 17 have been amended.

#### **Rejection of the Claims under 35 USC 103**

Claims 1-17 stand rejected under 35 USC 103(a) as being unpatentable over Sicola in view of Choquier (USP no. 6,961,681), which are the same references recited in the prior Office Action in rejecting the claims.

Applicant respectfully disagrees with the reason for rejecting the claims for the same arguments made in applicant's response to the rejection of the claims in the prior Office Action. However, in the interest of advancing the prosecution of this matter, the independent claims have been amended to more clearly state the invention. More specifically, the claims have been amended to recite that the primary agent and the failover agents are remote and that the agents are selected in a predetermined order of those agents within a communication path of the data transfer. No new matter has been added. Support for the amendment may be found at least on page 67, lines 15-20, which state "Each DRM Server can have the role of primary and failover server just not in the same server group. For example Server A may be the primary server in Server Group 1, and the failover server in Server Group 2, but Server A could not be the primary and failover server in the same group. DRM Servers that participate in the disaster tolerant architecture may be in the same geographic location or dispersed, but should be able to communicate over an IP network" and on page 68, lines 11-19, which states "[t]he failover agent must be a Mobility Agent and can be an actively running replications. The failover agents can be connected anywhere along the replication path (source, bunker, or target), but must be

communicating over an IP network with the same arrays and DRM Server as the primary Mobility Agent. Preferably, the DRM Server controls the failover of Mobility Agents. When the DRM Server issues a command to a Mobility Agent and the agent is not available the DRM Server will re-issue the command to another Mobility Agent on the same replication path.”

Sicola teaches a data replication system having a redundant configuration including dual Fibre Channel fabric links interconnecting each of the components of two data storage sites, wherein each site comprises a host computer and associated data storage array, with redundant array controllers and adapters. (see Abstract). Sicola further teaches, in Fig. 6B and paragraph [0069] -[0070] the manner in which selection of a failover server is chosen. More specifically, Sicola teaches that a heartbeat pinging system is applied between the servers to determine which of the servers is active (see box 640, 643 and 645). And further teaches that when both servers are not determined to be active, the backup server performs the controller failover operation (see box 647, 650, and 655).

However, Sicola fails to teach using a failure protocol for determining an order in which said software agents are designated to take over the data transfer operation in response to one or more data transfer commands when a failure of one or more of said software agents is determined, as is recited in the claims.

Sicola fails to teach an order to determine which server is required to take over the operation.

Choquier teaches an architecture including a topology manger for managing applications across a plurality of members for defining a plurality of resources comprising the applications. The architecture may also include a replication system for deploying the application to the

members. (see Abstract). Choquier further discloses, in col. 8, lines 11-24, which is referred to in the instant Office Action, refers to an election order of failover servers.

However, even if the teachings of Sicola and Choquier were combined, the combined device fails to disclose that the order of the selection of failover servers is further dependent upon the selected server being within the communication path of the data transfer.

A claimed invention is *prima facie* obvious when three basic criteria are met. First, there must be some suggestion or motivation, either in the reference themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the teachings therein. Second, there must be a reasonable expectation of success. And, third, the prior art reference or combined references must teach or suggest all the claim limitations.

Applicant believes that the teachings of Sicola and Choquier fails to describe all the elements claimed and that a *prima facie* case of obviousness has not been made. Accordingly, the invention recited in the aforementioned claims is not rendered obvious by the teachings of the cited references.

In view of the foregoing, the applicant believes that the reason for the rejection has been overcome.

Applicant respectfully submits that the claim 1 is in condition for allowance and respectfully request favorable reconsideration.

With regard to the remaining independent claims, these claims recite subject matter similar to that recited in claim 1 and were rejected for the same reason used in rejecting claim 1. Thus, for the amendments made to these claims, which are similar to those made in claim 1 and for the remarks made in response to the rejection of claim 1, which are also applicable in response to the rejection of the remaining independent claims, and reasserted, as if in full, herein,

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it is submitted that the reason for rejecting these claims has been overcome and the rejection can no longer be sustained. It is respectfully requested that the rejection be withdrawn and the claims allowed.

With regard to the remaining claims, these claims ultimately depend from the independent claims, which have been shown to contain subject matter not disclosed by, and, hence, allowable over, the reference cited. Accordingly, these claims are also allowable by virtue of their dependency from an allowable base claim.

Accordingly, it is respectfully requested that the rejection be withdrawn and the claims allowed.

In the event the Examiner deems personal contact desirable in the disposition of this case, the Examiner is invited to call the undersigned attorney at (914) 798 8505.

Please charge all fees occasioned by this submission to Deposit Account No. 05-0889.

Respectfully submitted,

Dated: \_\_\_\_\_

10/26/04



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